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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2866 OF 2003
IN
SUIT NO. 3049 OF 2003

M/s. Ishwara Enclave Co-op.

Hsg. Soc. Ltd. .. Plaintiffs.

VS.

M/s. Nikhieshwara Buildcon

India Ltd., & Ors. .. Defendants.

Mr. Dipen Merchant with Ms. Payal Daftari,
Ms. Ketki Furia i/by Shaunak Satpute
& Co. for plaintiffs.

Mr. Milind Vasudeo i/by H.V. Kode
for defendant nos. 1 & 2.

Mr. J.S. Chandnani for D. No. 3.

None for defendant no. 4.

CORAM : S.U.KAMDAR, J.

DATE : 1st February, 2006.

P.C.

. By consent of the parties, the following
order is passed :-

1. The learned counsel for the defendants

states that he does not press the issue of jurisdiction as a preliminary issue. Thus, the said issue of jurisdiction as framed by this Court under order dated 31.1.2006 under S. 9A of the CPC is not determined. The defendants will be at liberty to raise the issue of jurisdiction only at the trial of the suit after the evidence is led by the parties in the matter. In that view of the matter, the issue of jurisdiction is kept open to be determined at the final hearing of the suit.

2. In so far as the prayer for interim relief is concerned, the learned counsel appearing for the defendants gives an undertaking to this Court that till the hearing and final disposal of the suit, he will not alienate, encumber or create any third party rights or part with possession of the suit structures constructed on the ground floor of the plaintiffs society's building and also on the terrace of the plaintiff society's building. He further undertakes to this Court that so far as the recovery of compensation from defendant no. 4 is concerned, the same will not be received by him and he has no objection if the said amount is deposited in this Court. In so far as the amount of compensation is concerned, the defendant no. 4 is served with the notice of motion. In spite of service none appears for defendant no. 4. In that view of the matter, defendant no. 4 is directed to

deposit the monthly compensation of Rs. 24,000/- in this Court. In so far arrears are concerned, the defendant is directed to deposit the same from 18.12.2003 till date in this Court. The learned counsel for the defendant states that he has not received the said amount from the defendant no. 4. In that light of the matter the defendant no. 4 is directed to deposit the arrears of compensation within the period of four weeks from today in this Court. The said amount of deposit will abide the final outcome of the suit As soon as the amount is deposited, the Prothonotary and Senior Master is directed to invest the same in fixed deposit with any nationalised Bank initially for a period of three years and renew the same from time to time till further orders. In respect of the future compensation, the Prothonotary and Senior Master will invest the same in fixed deposit with any nationalised bank on the same terms as and when amount is accumulated to the extent of Rs. 1 lakh. Motion disposed of accordingly. No order as to costs. There shall be no order as to costs.

3. In view of the present order, motion no. 1108 of 2005 does not survive and the same has become infructuous. The said motion is dismissed accordingly. No order as to costs.